IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 836 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRABHAI RANCHHOIDBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR JM BUDHBHATTI for Appellant

MR KP RAVAL, APP for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 01/08/2000

ORAL JUDGEMENT [Per: Bhatt,J.)

The appellant has questioned the legality and validity of the conviction and sentence order, recorded by learned Addl. Sessions Judge, Bhavnagar, in Session Case No. 13 of 1988, whereby the appellant came to be held guilty under Section 20 of the Narcotic Drugs & Psychotropic

Substances Act, 1985 and sentenced to undergo minimum imprisonment of 10 years and to pay minimum fine of Rs.1 lac, and in default, rigorous imprisonment for two years, and also came to be held guilty for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, and sentenced to suffer simple imprisonment for six months, and to pay fine of Rs. 200, and in default, simple imprisonment for one month, by filing this Appeal under Section 374 of the Criminal Procedure Code (Code).

Learned Advocate appearing for the appellant original accused has raised the following contentions before us :

(i) that the report of Forensic Science Laboratory, examination and analysis produced at Exh.19 dated 16.12.1987 is wrongly relied by the trial court, as it did not contain the test, and the basis of which the conclusion has been arrived at;

(ii) that there is a breach of the provisions of Section 42 of the NDPS Act;

(iii) that the conviction simultaneously under Section 20 of the NDPS Act and also under Section 66(1) of the Bombay Prohibition Act, in respect of the same contraband article, is illegal.

Learned Addl. Public Prosecutor Mr. K.P. Raval is also heard. We have been taken through material parts of the evidence produced on record before the trial court.

A few material facts, may be stated, so as to, appreciate, the challenge against the merits of the impugned judgment and order.

The accused person was charged in Session Case No. 13 of 1988 for having committed offence under Section 8 read with Section 27 and offence punishable under Section 20 of the NDPS Act, on the premise that, he was found in possession of contraband item like 4 packets of `ganja' and four packets of `opium' without any authority and licence. On being searched by the Police Officer, during the course of their usual patrolling duty on 4.8.1987 at about 10.00 a.m. in Palitana town. 4 packets of ganja and 4 packets of opium were seized and collected, by observing necessary procedure, and were forwarded to the Director of Forensic Science Laboratory for examination and analysis and resultant report. The report dated 16.12.1987, came to be received, which is produced at Exh. 19, on the basis of which charge was framed. The report contained that the samples contain contraband substance, namely `opium' and `ganja'. The report as such, contained only the results of analysis. The basis, the methodology to carry on, or the test, upon which, the

examination was carried out, in order to reach to the result stated in the report, have not been mentioned and that is the reason why, his first plank of defence is vehemently agitated before us.

In so far as, the first submission raised on behalf of the appellant original accused in his defence is concerned, it must be noted that the Investigating Authority or prosecuting agency or the Regional Forensic Science Laboratory Office, did not send or collect the method and the type of test, under which the analysis assessment of the incriminating contraband articles were made. Be as it may, it is indisputable that in the report of Forensic Science Laboratory - Exh.19 dated 16th December, 1987, in support of the result of the analysis, nothing has been stated.

In such a fact situation, there should be various alternatives. Some of them can be articulated here as under :

(i) The matter can be remanded to the trial court with a direction to afford an opportunity to the prosecution to lead further evidence and to place on record the supporting documentary evidence contemporaneously prepared, if any, by the Office of the FSL as in most of the cases, the detailed analysis, meticulous evaluation by various tests

are mentioned.

(ii) The second alternative in this court also, the concerned officer could be called with a direction to produce the supporting material, if any, available.

(iii) Considering the overall time lap, the period of custody accused has undergone, the usefulness of selecting or adopting a particular mode of alternative, inclusive of the consideration as to whether, such a record could have been preserved for a long spell of 13 years, the examination was conducted, reported dated 16th December, 1987, even by taking that date as a beginning point, almost 13 years has expired, would it be fruitful, would it be useful, would it be really helpful! in search of truth, at this stage, to undergo an exercise, which may turn out to be an unproductive. We could not be positively informed that the record is required to be maintained for such a long time. Of course, it was contended that the offence of contraband article was only 20 grams in total, and against that, initially the offence was registered under the provisions of Section 66(1)(b) of the Bombay Prohibition Act. Besides to these two aspects, bearing in mind overall fact situation, we are left with no alternative, but at this stage, to accord the benefit to the appellant - original

accused in absence of supporting required material for reaching to a conclusion recorded in FSL Report at Exh.19.

In this connection, the reliance is placed on the decision of this Court in the case of MAHMAD HANIF vs. STATE OF GUJARAT, reported in 1994 (2) GLR 1191, it has been observed that the report of public analyst containing bare opinion without there being any full and complete data disclosing the tests or experiments performed by him, in support of such conclusion would not carry any probative evidentiary value. The practice adopted by public analyst in such serious cases in not following the rules is highly deprecated. Consequently, while admitting the accused to the benefit, the appeal was allowed and judgment and order of conviction came to

be reversed. The same principle is reiterated and followed in granting the benefit to the accused in this case while setting aside the conviction and sentence recorded against the accused.

Since various alternatives have been considered by us without expressing our clear opinion, about the proposition laid down in the said decision, we are prompted to allow the Appeal, taking into account the various alternatives, which we have highlighted hereinabove, and in the peculiar facts and special circumstances obtainable in special case, which has already travelled through long legal conduit pipe for more than 13 years.

In the result, the impugned judgment and order is quashed and set aside. The appellant - original accused is held to be not guilty for the charges against him. The Appeal is, therefore, allowed. The amount of fine, if deposited, shall be refunded to the accused upon proper verification and identity by the trial court. The appellant original accused shall be released forthwith since he is undergoing sentence, if not required, in any other case.

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